

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

10 GEORGE A. BOYLE, et al.,) 1:03-cv-05162 GSA
11 Plaintiffs,)
12 v.) **ORDER FOLLOWING STATUS
13 COUNTY OF KERN, et al.,) CONFERENCE**
14 Defendants.)
15 _____)

18 RELEVANT PROCEDURAL HISTORY

19 On February 7, 2003, Plaintiffs George A. Boyle, Noralee Boyle, Dean J. Miller,¹ Victor
20 VeVea, Alena VeVea, Ramona Guillen, Miriam Ruiz, the Law Offices of George A. Boyle, and
21 Giachino Family Enterprises, filed a Complaint in this Court, asserting eighteen causes of action.
22 Plaintiffs named nine defendants, including the County of Kern, Kern County District Attorney

26 ¹The Court notes that by Stipulation adopted August 2, 2005, Plaintiff Dean J. Miller dismissed his
27 complaint with prejudice as to all Defendants. (Doc. 58.)

1 Edward R. Jagels, Stephen Tauzer² and the Estate of Stephen Tauzer,³ and Victoria Sharp
2 (hereafter the “County Defendants”), as well as the City of Bakersfield, Bakersfield Police
3 Department, Scott Tunnicliffe, and Ralph Wyatt⁴ (hereafter the “City Defendants”). All
4 Plaintiffs were represented by George A. Boyle. (See Doc. 1.)

5 On March 21, 2003, Plaintiffs filed a First Amended Complaint (“FAC”), naming the
6 Kern County District Attorney’s Office, Bakersfield City Manager Alan Tandy, and Bakersfield
7 Police Chief Eric Matlock as additional Defendants. (See Doc. 5.) The City Defendants and the
8 County Defendants filed answers to the FAC on April 10, 2003. (See Docs. 6 & 8.)

9 On January 28, 2004, a Stipulation was lodged with the Court requesting that the matter
10 be stayed pending the outcome of related criminal proceedings against one of the Plaintiffs,
11 Victor VeVea (*U.S. v. VeVea*, case no. 1:03-cr-05410). On February 3, 2004, District Judge
12 Oliver W. Wanger adopted the parties’ stipulation and the instant matter was stayed accordingly.
13 (See Doc. 50.)

14 STATUS CONFERENCE PROCEEDINGS

15 After issuance of an order by the Ninth Circuit Court of Appeals denying Mr. VeVea’s
16 request for a hearing en banc in his criminal appellate proceeding, this Court conducted a
17 telephonic status conference on October 6, 2011. George A. Boyle appeared on behalf of the
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21 ²The Court’s docket was recently updated to reflect that, as a result of his death, Mr. Tauzer, in his
individual capacity, is no longer a Defendant in this action. (See, e.g., Doc. 73.)

22 ³The Estate of Stephen Tauzer was dismissed with prejudice from this action by order dated February 11,
23 2008. (Doc. 75.)

24 ⁴Following a motion to dismiss, District Judge Oliver W. Wanger ordered that Plaintiffs’ fifth and
25 eighteenth claims against Defendant Wyatt be dismissed with prejudice, and that Plaintiffs’ eleventh, sixteenth and
seventeenth claims against Defendant Wyatt be dismissed in part. Further, Plaintiffs’ sixth, seventh, ninth,
26 fourteenth, fifteenth and eighteenth claims against Defendant Wyatt were dismissed with leave to amend. (See Doc.
18.) However, Plaintiffs did not amend the complaint as to the sixth, seventh, ninth, fourteenth, fifteenth and
eighteenth causes of action. Thus, Defendant Wyatt filed his answer to the FAC and its remaining viable causes of
27 action on November 24, 2003. (See Doc. 46.)

1 named Plaintiffs⁵; Andrew Thompson appeared on behalf of the County Defendants; and Michael
2 Lehman and Virginia Gennaro appeared on behalf of the City Defendants. The Court set the
3 matter for a status conference to address, in part, whether the stay of this matter should be lifted
4 in light of the Ninth Circuit's decision. (See USDC Case No. 1:03-cr-05410-LJO, Doc. 335.)
5 The Court also sought to clarify issues regarding consent to magistrate judge jurisdiction. This
6 Court now turns to address those issues, in addition to an issue regarding legal representation.

7 ***The Legal Representation of Named Plaintiffs***

8 At the status conference, Plaintiffs' counsel Mr. Boyle advised the Court that he did *not*
9 represent named Plaintiffs Victor VeVea or Alena VeVea. Mr. Boyle contends the VeVeas were
10 represented by Dean J. Miller, now deceased. Despite Mr. Boyle's assertion however, a review
11 of this Court's paper file, as well as that maintained on the CM/ECF system, confirms that Mr.
12 Boyle has represented all named Plaintiffs from the time this action commenced on February 7,
13 2003, through to the present. Mr. Boyle's signature appears on the original complaint and the
14 operative FAC. Moreover, the Court notes he has signed a number of pleadings during the
15 course of this litigation as legal counsel for all Plaintiffs. (See, *e.g.*, Docs. 1, 3, 11, 13, 21, 29,
16 32, 36-37, 57 & 80.) The electronic docket indicates a single attorney representing all Plaintiffs:
17 George A. Boyle.

18 Mr. Boyle also advised the Court that Victor VeVea was represented by "Victor Page,"
19 who could be contacted at telephone number "415-986-4558."⁶ It appears perhaps Mr. Boyle is
20 confusing Mr. VeVea's representation in the related criminal matter with his representation in the
21 instant civil matter. To be clear, at this juncture, the parties are advised that the VeVeas are in
22 fact represented by Mr. Boyle in the instant civil action, as are *all* named Plaintiffs. Mr. Boyle

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25 ⁵Mr. Boyle's assertions about whom he does and does not represent in this action are addressed below.
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27 ⁶The Court believes Mr. Boyle is referring to attorney Edgar Page, who practices criminal law and is
associated with the telephone number provided.

1 will remain counsel for record for all named Plaintiffs unless he takes further action to remove
2 himself as counsel of record.

3 ***Consent to Magistrate Jurisdiction***

4 Following Chief Judge Anthony W. Ishii's Order Of Reassignment filed September 14,
5 2011, the parties were provided thirty days within which to complete and file a form, either
6 consenting or declining the jurisdiction of a United States Magistrate Judge. (Doc. 85.)

7 On September 16, 2011, the County Defendants filed their collective consent to
8 magistrate jurisdiction. (Doc. 86.)

9 On September 28, 2011, a form was filed by Mr. Boyle, apparently intending to consent
10 to magistrate jurisdiction. Nevertheless, it is not clear from the form whether that consent was
11 intended to be on behalf of all Plaintiffs. The form is incomplete in this regard. Therefore, at the
12 status conference, this Court directed Mr. Boyle to file an amended form, clearly indicating
13 whether or not his signature represented the consent of all parties. **Counsel shall file an
14 amended form no later than October 21, 2011.**

15 The City Defendants have not yet indicated whether or not they consent or decline
16 magistrate jurisdiction; the form is due to be filed no later than **October 14, 2011**.

17 Relatedly, this Court advised all parties that in light of the appointment and impending
18 investiture of a new magistrate judge, it is possible that this matter could be reassigned to another
19 magistrate judge in the Fresno division.

20 ***Plaintiff Giachino Family Enterprises***

21 Mr. Boyle indicated during the status conference that he was willing to dismiss all claims
22 on behalf of named Plaintiff Giachino Family Enterprises. The County and City Defendants
23 offered to stipulate to such a dismissal. Plaintiff's counsel shall file dismissal documents
24 regarding this Plaintiff no later than thirty (30) days from the date of this Order.

1 ***Status of the Stay of This Proceeding***

2 Lastly, this Court inquired of the parties whether or not, in light of the Ninth Circuit's
3 recent mandate in the related criminal matter, the stay in this action should now be lifted.

4 Mr. Boyle advised the Court that it was his understanding that Plaintiff VeVea would be
5 filing a petition for writ of certiorari with the United States Supreme Court, and thus, this matter
6 should remain stayed. Mr. Thompson, counsel for the County Defendants, agreed that if a
7 petition for writ of certiorari is to be filed, the criminal action would remain pending until a
8 ruling is issued by the United States Supreme Court.

9 United States Supreme Court rule 13 provides that a petition for writ of certiorari shall be
10 filed "within 90 days after entry of the judgment" by the United States Court of Appeal.
11 Therefore, because the July 29, 2011, judgment of the Ninth Circuit Court of Appeals took effect
12 on September 16, 2011, it appears any petition for writ of certiorari should be filed with that
13 court no later than December 15, 2011. As such, it appears this case should remain stayed
14 pending a determination of whether a petition for writ of certiorari will be filed on behalf of
15 Plaintiff Victor VeVea.

16 **CONCLUSION**

17 According to the foregoing, the STAY of these proceedings REMAINS IN EFFECT until
18 the related criminal matter involving Plaintiff Victor VeVea is final for all purposes. Counsel
19 shall have the responsibility of advising this Court once the criminal matter has concluded, either
20 by filing a dismissal of the instant action or a stipulation lifting the stay.

21 Plaintiffs' counsel Mr. Boyle SHALL file an amended consent form as outlined herein,
22 no later than October 21, 2011. Additionally, Mr. Boyle SHALL file appropriate dispositional
23 documents concerning Plaintiff Giachino Family Enterprises within thirty (30) days of the date of
24 this Order.

25 The Court SETS a further telephonic status conference for **December 8, 2011, at 10:30**
26 **a.m.**, before the undersigned. In the event the matter is reassigned, the status conference will be

1 taken off calendar. Five days prior, counsel shall provide the Court with a joint statement
2 outlining the status of the filing of any petition for writ of certiorari on Mr. VeVea's behalf.

3 Finally, counsel are advised that failure to follow this Order may result in the imposition
4 of sanctions.

5 IT IS SO ORDERED.

6 Dated: October 7, 2011

/s/ Gary S. Austin
7 UNITED STATES MAGISTRATE JUDGE

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